

V. DOE ORDERs and ARARs

Notes:

Overview

- Background
- Private versus Public Regulation
- DOE Orders
- DEAR
- Orders as ARARs
- NRC Regulations and Orders

DOE Orders & ARARs

Notes:

Background/Legislation

- The Atomic Energy Act of 1954
- Department of Energy Organization Act of 1977

DOE Orders & ARARs

Notes:

Title 42 U.S.C. 2011, et. seq., The Atomic Energy Act of 1954, as amended, authorizes the management of atomic energy activities.

Title 42 U.S.C. 7101, et. seq., The Department of Energy Organization Act, as amended created the Department of Energy to coordinate the effective administration of federal energy policy and programs.

Legislation Created Two Federal Agencies

- Nuclear Regulatory Commission
 - ⇒ Private nuclear materials
 - ⇒ Regulations
- Department of Energy
 - ⇒ Federal nuclear materials
 - ⇒ Regulations
 - ⇒ Orders

DOE Orders & ARARs

Notes:

Issuing Policy

- Policy Statements
 - Describe philosophies of the Department
- Regulations
 - Enforceable requirements
- Orders
 - Establish objectives, requirements, and responsibilities
- Notices
 - Like Orders, but more immediate
- Manuals
 - Supplement orders

DOE Orders & ARARs

Notes:

Department of Energy Acquisition Regulation (DEAR)

- DEAR (48 CFR 9)
 - ⇒ DEAR (48 CFR 9).
- Contract management
 - ⇒ *Applies to all DOE acquisitions of supplies and services*
- Comply with DOE Orders - 5400.1

DOE Orders & ARARs

Notes:

Implementation of DOE Orders

- Contractor-driven organization
- Comply with Orders in contract
- Oversight by DOE

DOE Orders & ARARs

Notes:

DOE Orders

- Not promulgated
- Contractually binding (promulgated)
- It's the law

DOE Orders & ARARs

Notes:

External Regulation

- Self-regulating
- External regulation
 - ⇒ Environmental Management
 - ⇒ Transitional stage

DOE Orders & ARARs

Notes:

Environmental Policy

- DOE Order 5400.1
 - ⇒ DOE is firmly committed ... to environmental protection goals.
 - ⇒ *DOE policy to conduct the Department's operations in compliance with the letter and spirit of applicable environmental statutes, regulations, and standards. (page 6)*
- Federal Facility Agreements
- Environmental Laws - both federal and state
 - ⇒ ARARs compliance

DOE Orders & ARARs

Notes:

Orders versus ARARs A View from DOE

- Round peg in a square hole
- Orders are not ARARs
 - ⇒ CERCLA compliance with other laws manual (pages 5-17 and 5-18)
- Orders are not TBCs
 - ⇒ March 29, 1993, memorandum
- DOE must comply with Orders

DOE Orders & ARARs

Notes:

Orders as ARARs A View from EPA

- Square peg in a round hole
- Orders are not ARARs
- Orders are TBCs
- Is the Order more instructive or more stringent or more prescriptive?
- Negotiate with EPA/state

DOE Orders & ARARs

Notes:

What are DOE Orders?

- Orders are neither ARARs nor TBCs
- DOE must comply with Orders
- If the CERCLA process meets the requirement in the Order, then the Order as well is satisfied
- Orders included in RODs are enforceable
- When the Order is part of the signed ROD, the Order cannot be waived using DOE procedures

DOE Orders & ARARs

Notes:

Orders and NRC Regulations

- NRC cannot regulate DOE (AEA)
- DOE cannot regulate NRC
- Disposal of high-level nuclear waste - NRC regulates DOE

DOE Orders & ARARs

Notes:

Orders and NRC Regulations

- Can use NRC regulations when they are more prescriptive than the DOE Order
- NRC regulations can only be relevant and appropriate
- Must complete requirements in the Order

DOE Orders & ARARs

Notes:

Summary

- DOE Orders are not ARARs
- DOE must complete the requirements in the Order
- Order included in RODs are enforceable
- NRC requirements can only be relevant and appropriate
- Can use NRC regulations as relevant and appropriate when they are more prescriptive

DOE Orders & ARARs

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